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EXAMINER	
MARANDI, JAMES R	

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/815,300	FUNSTON, LANCE T.	
	Examiner	Art Unit	
	JAMES R. MARANDI	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This action is in response to applicant's amendment filed on 9/26/2008. Claims 1-7, and 9-11 are presently pending. Claim 8 has been canceled.

Response to Arguments

Applicant's arguments with respect to claims 1-7 and 9-11 have been considered but are moot in view of the new ground(s) of rejection.

Although a new ground of rejection has been used to address additional limitations that have been added to claims 1, 2, 3, and 7, a response is considered necessary for several of applicant's arguments since Applicant's Admitted Prior Art (AAPA) will continue to be used to meet several claimed limitations.

- In ***The Scope and Content of the Prior Art section*** of the Remarks (Page 8 of Remarks), Applicant states that only one sentence in each of ¶¶ [25] and [28] of applicant's disclosure pertain to the prior art.

Examiner agrees, and points out that those two sentences admit availability of electronic affidavits and Nielsen's CMIT database. Examiner has relied on those admissions by applicant to reject any limitations that may have been perceived to be applicant's own invention, such as limitations of claims 2,3, 5, and 9 (where stated ***obtaining, in electronic format, details on the airing of the local spots*** -electronic affidavits-, and ***obtaining national viewing data for the network*** -CMIT-).

- Applicant further states that ***"As explained in paragraph [10] the prior art method used a "master zone" and made assumptions about how many times a spot ran across multiple zones. As explained in paragraph [11] the prior art also determined impressions based on a daypart (multiple hour) Nielsen rating. These approximations were then aggregated in a very crude manner to give an approximation of how many people saw a given spot. In contradistinction, the present invention, as defined by the amended claims, collects data representing each airing of each spot in a database, and correlates each airing with specific audience data for the time slot the spot aired, most preferably quarter hour data. These more precise calculations permit both more accurate billing for spots that have been aired, and create a database to which predictive algorithms are applied to create forecasts and manage inventory prior to spots being aired."*** (Page 9 of Remarks, 1st Paragraph)

Examiner contends that it is notoriously well known in the art that a more dense and accurate data will produce a more accurate results. The whole science of statistics is based on finding the right sampling population within reach and using various extrapolation techniques to arrive at a view of the larger picture. Furthermore, USPN 7,039,931 to Whymark, cited in previous office action, shows a multitude of methods to measure and track various media parameters at very granular levels (Abstract, Col 2, lines 37- 64, Col. 23 lines 33-42). Whymark is one of many inventions where the actual airing of programs are detected and used in pricing, selling, and auditing of actual viewing of programs. This is a confirmation of the motivation in the market place for ever more accurate accounting of not only aired but actually viewed programs.

- With regard to applicant's statement that ***"Additionally, the Office Action notes that the specification as filed "does not expressly show automating steps." However, Applicant does not contend that the present invention is merely the automating of a known process. As set forth in MPEP 2106, "merely using a computer to automate a known process does not by itself impart non-obviousness to the invention." (citing cases). Instead, each of independent claims 1, 2 and 3 has been amended to recite specifically the methods of the present invention, including but not limited to the use of viewership information based on fractions of an hour and correlating these data with actual delivery data in a database. The data records contained therein are then processed by multiplication***

or division operations to determine a particular spot's delivery, and then each calculated value is aggregated (summed) to determine a national equivalent unit in a manner neither disclosed nor suggested in the prior art." (Page 9 of Remarks, 3rd Paragraph), Examiner would like to clarify the context of a 103(a) rejection.

Applicant's claims are series of mathematical steps. In and by themselves they are not enabled, as there is no mechanism in place to make them statutory, meaning execute them as to produce a tangible results. However, in the interest of compact prosecution, examiner stated that automating and mechanizing such operations are obvious to one of ordinary skill in art.

- Applicant further cites ***"As noted recently by the Supreme Court in KSR International Co. v. Teleflex, Inc., 550 U.S. __, 127 S.Ct. 1727 (2007) when determining obviousness, one "should be aware, of course, of the distortion caused by hindsight bias." (KSR, slip op. at 17).",*** and states that ***In this instance, all the pending claims stand rejected over information set forth in the application itself. Under the long-standing law affirmed by KSR, this is not an appropriate showing of obviousness. Id*** (Page 10 of Remarks, 1st Paragraph)

Examiner disagrees. As applicant's background information provides a rich testimony of what is notoriously well known in the art, and is used by the examiner in such context.

Claim Rejections - 35 USC § 101

1. Claim(s) 1-7, and 9-11 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 and 9-11 rejected under 35 U.S.C. 103 (a) as being unpatentable over applicant's own disclosures (background of the invention), in view of Cable Scope's Media Math based on 2000 Nielsen Media Research (hereinafter "MediaMath").

Regarding claim 1, applicant's admitted prior art discloses: **A method of calculating performance related to a local delivery of a local television commercial spot advertiser by aggregating local spots broadcast on a network into national equivalent units using a database comprising national measurement data including at least the total number of households that subscribe to the network and the total number of persons within a specific sex-age demographic group that subscribe to the network** (¶ [9] - [11], and what is notoriously well known in the art such as Nielsen Ratings) **the method comprising the steps of:**

assigning audience values for one or more local spots by determining a household universe for the data comprising the total number of households that subscribe to the network and storing the household universe in the database (this is equivalent to what Nielsen calls the House Hold Universe)

determining a demo universe for the network from the data comprising the total number of persons within a specific sex-age demographic group that subscribe to the network (this is the population sample that Nielsen meters to arrive at ratings);

calculating a demo universe factor by dividing the demo universe by the household universe (this is equivalent to Nielsen's ratings);

retrieving a specific household universe for at least that part of the network corresponding to the location in which a spot was broadcast from the database and storing the specific household universe in a record corresponding to a specific local spot in the database for later retrieval (this is a local spot population, a subset of global House Hold Population);

calculating a universe conformance factor by dividing the household zone universe by the household network universe (this is a projection factor, well known in statistics fro extrapolating data from one set of data to arrive at another set);

calculating household delivery for a specific spot by multiplying the network household delivery and the universe conformance facto and

storing the household delivery data in the database (part of extrapolation technique);

calculating the spot's demo delivery by multiplying the network demo delivery by the universe conformance factor and storing the demo delivery number in the database (part of extrapolation technique);

repeating these steps in total for each additional local spot; and

aggregating the local spots and their corresponding household delivery, demo delivery data to obtain national equivalent units (repeating and reiterating the well known steps outlined above)

Claim 1; exhaustively list the elements and steps of equations, in the tradition of Nielsen Media Research Ratings, as disclosed in MediaMath. Samplings of Nielsen's Ratings calculations, as presented in Pages 1 and 2 (Col. 3) of MeidaMath, are presented here for reference:

Furthermore, It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the affidavits and NTI gives you just what you would expect from the manual step as shown. In other words there is no enhancement found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the scoring and iterating steps because this would

speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 2, applicant's admitted prior art discloses: **A method of aggregating local spots on a network into national equivalent units** (¶ [11]) **comprising the steps of:**

obtaining, in electronic format, details on a database comprising data correlated to the airing of the local spots (¶ [9] and a sentence in ¶ [25] admits availability of such correlations in form of affidavits in electronic forms)**;**

obtaining national viewing data for the network in increments of less than one hour corresponding to each time the local spot aired and uploading said data into said database (Nielsen's CMIT, as admitted in ¶ [28])**;**

determining household impression and demo impression for the local spots based on the national viewing data (¶ [11], also Nielsen's ratings)**;**

assigning audience values for the local spots based on the impression delivery for the spots (extrapolation technique well known in the art, also same as Nielsen's methodology of arriving at Cost Per rating Point, as shown in discussion of claim 1)**;**

sorting the database by one or more of advertiser, length of spot; network; daypart, and ISCI Code (ISCI codes are known and used for tracking and auditing of advertising spots, as also shown by Whymark; sorting of

databases to view or sift through granular data, for selection of particular point, is well known in the art) ;

removing all spots that ran outside a contracted daypart;

The following steps, further exhaustively cite elements of equations expressing methodologies well known in the art for extrapolating data from one population to another. This is very much the same as what is already admitted by the applicant, in the back ground of the invention, as prior art. Nielsen Ratings, as discussed in claim 1 is based on the same methodology.

obtaining a total number of national equivalent spots and an impression delivery for those spots, the impression delivery comprising one or more of: a total household delivery; an average household delivery per spot; an average household rating, a total demo delivery; an average demo delivery per spot; and an average demo rating;

calculating a subtotal of impression delivery by one or more of ISCI code, daypart, length, and network;

calculating a total number of national equivalent units by adding household zone universe data for each of a plurality of local spots stored in the database and dividing that number by the total number of subscribers claimed for that network;

calculating an average household delivery per spot by dividing the total household delivery by the total number of network equivalent spots;

calculating an average household rating by dividing the average household delivery per spot by the total number of claimed subscribers and then multiplying that number by 100;

calculating a total demo delivery by adding all of the demo delivery numbers for the local spots from the database;

calculating an average demo delivery by dividing the total demo delivery_ by the total number of network equivalent spots;

calculating an average demo rating by determining the average demo delivery expressed as a percentage of the total number of claimed subscribers, multiplied by a demo universe factor; and

as to

repeating the steps for additional spots and aggregating the audience values to create a national equivalent unit on the network, It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the affidavits, NTI, and CMIT gives you just what you would expect from the manual step as shown. In other words there is no enhancement

found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the scoring and iterating steps because this would speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 3, applicant's admitted prior art discloses:

A method for aggregating local commercial spot inventory into national equivalent units for a network and providing accurate audience delivery measurements using published national viewing data comprising the steps of:

processing affidavits in an electronic format for every local spot aired, the affidavits comprising detailed information on the airing of the local spots(¶ [9], the use of affidavits in this venue, as admitted by applicant, is notoriously well known in the art)**;**

determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the

information from the processed affidavits as a record in a database (¶ [8], Nielsen's CMIT database contains data on a day by day, quarter hour basis, as also admitted by applicant. Determining impression delivery for a particular program and demographic group is notoriously well known through Nielsen's Ratings and Share of audience calculations)**;**

assigning audience values for the local spots based on the impression delivery (¶ [11])**;**

aggregating values calculated using the local spot affidavit information, impression delivery and audience values to generate a national equivalent unit (¶ [11])**; for the national equivalent unit determining the number of times the unit aired and an impression delivery for the unit** (¶ [11])**;**

comparing an estimated delivery derived from data in the database with the actual delivery to determine the value of the national equivalent unit (¶ [8])**;**

The following steps are iteration of the above steps:

for additional national equivalent units, repeating the steps of determining an impression delivery of the local spots, of assigning audience values for the local spots, and of determining the number of national equivalent units aired and the impression delivery for the national equivalent units; and

calculating from the national equivalent units the amount to charge an advertiser for an advertising schedule on the network.

Applicant's admitted prior art does not expressly show automating steps of claim 1.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the affidavits , NTI, and CMIT gives you just what you would expect from the manual step as shown. In other words there is no enhancement found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of invention to automate the scoring and iterating steps because this would speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 4, applicant's prior art disclosure admits **wherein the affidavits comprise the exact date and time the local spot aired, the network on which**

the local spot aired, and the program during which the local spot aired (¶ [9]).

Regarding claim 5, applicant's prior art disclosure admits **wherein the affidavits are received in electronic format** (admission is offered in a sentence in ¶[25]).

Regarding claim 6, **wherein the electronic formats of the affidavits are converted into a readable format,** is merely an automation of a known process which would speed up an already expected result.

Regarding claim 7, applicant's prior art disclosure admits **wherein the affidavits are received in paper format and are scanned or otherwise converted into readable electronic format** (¶[9], as admitted by applicant, in a sentence in ¶[25], affidavits are available in electronic forms. Converting paper copies through technologies such as OCR is notoriously well known in the art. This is merely an automation of a known process which would speed up an already expected result).

Claim 9 is rejected by the same analysis as offered for claims 5 and 7.

Claims 10 and 11 are rejected based on the same analysis as claim 3.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is (571)270-1843. The examiner can normally be reached on 8:00 AM- 5:00 PM M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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